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5 UNITED STATES DISTRICT COURT

6 FOR THE EASTERN DISTRICT OF WASHINGTON

7 MARIA G. DAVILA-MARQUEZ and)
8 ERNESTO MARQUEZ, wife and husband,)
9) NO. CV-12-5059-LRS
10 Plaintiffs,)
11) 2nd AGREED PROTECTIVE
12 vs.) ORDER
13)
14 CITY OF PASCO, a municipal corporation;)
15 and RYAN FLANAGAN and JANE DOE)
16 FLANAGAN, husband and wife, and)
17 ZACHARY FAIRLEY and JANE DOE)
18 FAIRLEY, husband and wife, and)
19 ROBERT METZGER, Chief of Police of)
20 the Pasco Police Department,)
21)
22 Defendants.)
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25 Plaintiffs requested in discovery, from the defendants, all psychological
26 testing materials utilized by defense expert, Dr. Dennis Pollack, during his
27 evaluation of Maria Davila-Marquez. However, the psychological and diagnostic
28 testing materials used by Dr. Pollack were purchased from NCS Pearson, Inc.,
under contractual restrictions, only for use by qualified professional practitioners.

1 Testing materials published and/or distributed by NCS Pearson, Inc. are protected
2 by copyright and trade secret law. The copyright protection accorded to the test has
3 been upheld in Federal Court (See *Applied Innovations, Inc., v Regents of the*
4 *University of Minnesota and National Computer Systems, Inc.*, 876 F.2d 626 (8th
5 Cir. 1989)). Further, none of the exclusive rights accorded to a copyright owner by
6 the United States Copyright Act, including, the right to reproduce, copy, distribute,
7 or publish, may be exercised with respect to copyrighted testing materials without
8 the express written permission of Pearson. The defendants are willing to produce
9 such copyrighted testing materials, provided a protective order is entered
10 concerning the intended disclosure, use, and return of said materials.
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15 BASED upon the agreement of the parties and good cause,

16 IT IS HEREBY ORDERED that the Motion For Entry Of 2nd Agreed
17 Protective Order, ECF No. 30, is GRANTED, and defendants shall produce the
18 trade secret psychological testing materials utilized by Dr. Dennis Pollack
19 provided that plaintiff's counsel adhere to the following:
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- 22 1. Access to the testing materials and testimony regarding such materials
23 is restricted to plaintiff's counsel, staff, and/or plaintiff's
24 psychological expert;

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- 1 2. Plaintiff's counsel, staff and/or plaintiff's expert shall not further
- 2 duplicate any of the testing materials produced;
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- 4 3. The testing materials may only be used for the limited purposes in
- 5 connection with this specific case;
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- 7 4. To the extent any portion of such materials are disclosed in pleadings,
- 8 testimony, or other documents, such records shall be filed under seal;

9 IT IS FURTHER ORDERED that plaintiffs shall keep all such testing

10 materials referenced herein confidential and not distribute them to any third parties
11 unrelated to this lawsuit. The materials shall not be used for any purpose other
12 than use in this lawsuit. Upon the completion of this litigation, plaintiff shall
13 promptly return all such testing materials directly to Dr. Dennis Pollack.

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15 DATED this 13th day of May, 2013.

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17 *s/Lonny R. Sukko*

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19 LONNY R. SUKO
20 United States District Judge